Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1991

RAYMOND WAHRMAN, MARY WAHRMAN TRUST---48-6265674,

Petitioner,

vs

JOHN WAHRMAN, ELMO LUND, and ROBERT CREIGHTON,

respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

PETITION FOR WRIT OF CERTIORARI

RAYMOND WAHRMAN
MARY WAHRMAN TRUST---48-6265674
ROUTE 4 McCook, NE (308) 345-2507

QUESTIONS PRESENTED FOR REVIEW

1) Can the Mary Wahrman trust be voided by Judges Reinert and Hon. Keith R. Willoughby, voiding the recorded trust deeds and ordering a Sheriff sale of the trust deeded real estate? Elmo Lund advertised and sold this real estate with the help of Robert Creighton and Evelyn Zabel Wilson. He had no one to bid, but when asked who he had, he stated that it was none of my business and that he was ready to sell the property. A one dollar bid was given, and to this day no new deeds or title insurance has been given to Raymond Wahrman. Judge Keith R. Willoughby took this money and paid to Elmo Lund the sum of $15,320.64 and to Robert Creighton the sum of $9,559.17. How can these people be allowed to do this?

2) Itemized statements and receipts were requested of the money paid out by Hon. Judge Keith R. Willoughby, but they were directly denied. (Journal entry May 7, 1991) Why have not and why do not they have to make these available upon request? What are they hiding?

3. Since the hearing was held before Judge Keith R. Willoughby and decided by him why was the Journal entry signed by Jack Burr on the line above where Keith R. Willoughby, Judge, District Court was type written? Since he presided, why did he not sign his own name? Robert Creighton was also present at the hearing which is a matter of record, yet on the line above his name where he should have signed, Charles Peckham signed his name. According to the Journal entry, neither of these persons were present at the hearing. How could these be legally signed by people who weren"t even there?

4. As is recorded in the court records, no notification of any sale proceeding for the sale of the Kansas Real Estate, was even given me. I saw the advertising of the sale in the paper. Why was I refused notification of this sale, even after the court had held the hearing?

5. An August 2, 1988 Journal Entry from the District Court of Rawlins County, Kansas,Case No. 88-C-04 states: That in addition to the real property above described located in Rawlins County, Kansas, the said Mary Wahrman owned a 100% interest in the following described quarter section of land located in Red Willow County, Nebraska, to wit; The Northeast Quarter (NE-1/4 of Section Thirty (30), Township One, North (1-No.), Range Twenty-nine (29) West of the 6th P.M.

This is one quarter of the East one-half (E-1/2) of Section Thirty (30), Township one North (1 No,), Range Twenty-Nine (29) West of the Sixth (6th) P.M., that I personally purchased from Lowell and Juanita Relph, Carolee Stride, R.D.V. and Jim Hull. This is recorded in Book 117 of Deeds, on page 915 in Red Willow County, Nebraska. Doesn't this show that proper time wasn't taken by these lawyers to make sure of their facts before publishing them? How can they not be liable for the damage they have caused me?

List of Parties

RAYMOND WAHRMAN
MARY WAHRMAN TRUST----48-6265674
Petitioner

v.

JOHN A. WAHRMAN
ELMO LUND AND ROBERT CREIGHTON
Respondents

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OPINIONS

Mag. Judge ruled in her office September 16, 1985, that the Trust died at Mary Wahman's death and ordered paid to Elmo Lund $530.00 and Robert Creighton $2,099.17 from the Trust's ccount. The District Judge then had the District Clerk of Court pay the balance to them. April 19, 1991. Also on this day, the court denied the motion of the objection for confirmation of sale and the request for receipts of expenses, and itemized statements for allowances for attorney's fees.

GROUNDS FOR JURISDICTION

The decision of the Kansas Court of Appeals was entered on January 30, 1992, (91-66581-AS), and states the Wahrman's argument on attorney fees is not specific, and does not have proof that they did anything. Anyone knows that they didn't do anything. If what they did was legal, why do they deny and refuse to give statements of what they did? Statements and supporting proof of the money taken by the judge and given them should be mandatory. We should have the legal rights to make sure that our mother's trust was carried out to her wishes. THE DECLARATION OF TRUST on September 10, 1980, was not only signed by Mary Wahrman, but was also signed by two witnesses, and acknowledged before a notary public. E15 With District Judge the Honorable Keith R. Willoughby making the trust null and void and Elmo Lund altering the date to September 16, 1980, they got control of it and they just plain robbed this unless statements can be shown, a review is asked to recover the money of about $30,000.00.

STATEMENT OF THE CASE

The Magistrate Court of Rawlins County, Kansas, began this in about 1983, when the checks and all receipts were direct deposit to the bank and Mary Wahrman was placed in rest home by John Wahrman. Elmo Lund entered this home and caused Mary Wahrman great damage to health by getting a court reporter and making her believe that she needed to pay John for caring for her for three years, etc.

The Mary Wahrman Trust of September 10, 1980, was not only signed by Mary Wahrman, but signed by two witnesses, and acknowledged before a notary public. E15

(A) A person competent to create a trust;
(B) An indication of intention;
(C) Property to which the trust may or does pertain;
(D) A definite and complete present disposition of that property;
(E) A provision, at least by implication for office of trustee;
(F) A person capable of holding the equitable interest in property as beneficiary.

Mary Wahrman was a person of legal age, and would seem to have a prima facie showing of competence to

create a trust by the very fact that she obtained the trust document and caused two witnesses plus a notary public to witness her signature and take her acknowledgment. The trust document shows clearly her intention to create a trust. E9, E 15 The document clearly describes the property to which it pertains, and by its terms makes a definite and complete disposition of the property into the trust, and gives instructions for its treatment after Mary Wahrman's death. It appoints a trustee (Mary herself), and two successor trustees. E9, E 15 Her four sons are persons capable of holding the equitable interests in the property as beneficiaries. As a matter of fact, there never has been any challenge to any of these elements in either the Rawlins County, Kansas, or the Red Willow County, Nebraska, District Courts.

Whatever may be the law in Kansas, there is no conceivable reason why Mary Wahrman's Declaration of

Trust would not be effective to convey the subject quarter to the Mary Wahrman Trust, creating interest in said land to her four sons as trust beneficiaries. It is also critical to note that the Declaration of Trust, in paragraph 8, second page, states that the trust shall be construed and enforced in accordance with the laws of the state of Nebraska.

The Kansas Court of Appeals in its Memorandum Opinion, states that, because the Mary Wahrman Trust was not registered in her lifetime, the trust property passed by interstate succession at her death. E6: Memorandum Opinion, pp.9-10. Nebraska law makes no such requirement for a trust to be effective after the death of the trustor. Nebraska R.R.S. 1943,sec.30-2801 Although the Mary Wahrman Trust was a revocable trust, there was never any evidence that she ever revoked it, and no issue has ever been raised as to revocation, either

in the case at bar or in the Rawlins County case. It would therefore logically follow that Mary Wahrman was not the owner of the subject land when she died, and that rather her trust was the owner.

THE MARY WAHRMAN TRUST DID NOT CEASE TO BECOME EFFECTIVE AFTER HER DEATH.

The governing rule of construction for determining the meaning of the Mary Wahrman Declaration of Trust is stated in Nebraska R. R. S. 1943, section 76-205, that in the construction of every instrument creating an interest in real estate, it shall be the duty of the courts of justice to carry into effect the true intent of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law.

Although the co-trustees did not convey the trust property "Forthwith" to the beneficiaries after Mary' death, this delay cannot be said to have any relevance to ownership of the trust over the land, or to the power of the successor trustees to convey the trust property.

It was clearly the intention of Mary Wahrman to have her property distributed by her successor trustees after her death, and at least the personal property, and particularly the money, would reasonably be expected to be divided up. Since the same language governs distribution of the real estate as the personal property, it is completely reasonable that the trust authorizes the co-trustees to divide up the land, the same as the personal property.

THE HOLDINGS OF THE RAWLINS COUNTY DISTRICT COURT ARE TOTALLY IRRELEVANT TO, AND NOT BINDING ON, ANY ISSUE IN THE CASE AT BAR.

Probably the largest source of confusion in this case arises from the bundle of papers submitted to the Red Willow County District Court as evidence of the struggles and decisions of the Rawlins County District Court regarding the Kansas lands and personal property of Mary Wahrman. (E6). The Kansas Court appears almost to have stumbled into its holdings regarding the Mary Wahrman Trust, because Raymond

Wahrman was not served with process and did not appear in the case until it was far advanced---past the stage of decreeing partition. E6:26-29; 50-51; E6:Memorandum Opinion of Courts of Apppeals: 8-9. Thus, the Rawlins County District Court was possibly not even aware of the facts concerning the trust when it first entered critical order concerning the case.

On August 2, 1988, the Rawlins County District Court basically just confirmed its previous rulings about the invalidity of the trustees' deeds, because Raymond Wahrman had not procured councel for effective presentation of his side of the case. In any event and whether its decisions were good or bad, the matters over which the Rawlins County Districtt Court had jurisidic tion, and entered judgment were (1) determination of the heirs of Mary Wahrman according to Kansas law; (2) determination of title to Mary Wahrman's personal property and Kansas real estate; (3) determination of the inheritance of Mary Wahrman's property; and (4) order for probation of the Kansas lands. E6: 55-57

It is not possible for the Rawlins County District Court to determine the Mary Wahrman's Declaration of Trust was not effective to convey the Nebraska quarter to the Mary Wahrman Trust; that Mary Wahrman owned the Nebraska quarter at her death; that the four Wahrman brothers inherited said quarter from Mary; or that the trustee' deed conveying said quarter to Raymond Wahrman after Mary's death was invalid. These are matters over which only the Red Willow County District Court of Probate Court has jurisidiction. To the extent that the Red Willow County District Court allowed itself to be influenced by the Kansas proeedings, and thus deviate from the strict application of Nebraska law to the title of Nebraska land, under the facts of the case, it committed error. T24, para. 1

CONSTITUTIONAL AND STATUTORY PROVISIONS

EISENHUT v STEADMAN: 13 Kansas, App. 2d, 220, 223, 767, P .2d, 293, (1989)

HALE v HAMILTON: 233 Kansas, 880, 886, 667, P .2d, 350, (1983)

NEBRASKA R.R.S., 1943, SEC. 30-2801

SUMMERS v MONTGOMERY ELEVATOR COMPANY: 243 Kansas, 393, 399, 757, P 2d, 1255, (1988)

Petitioner, Raymond Wahrman, Mary Wahrman Trust, respectfully prays that a writ of certiorari issue a review to the judgement and opinion of the Kansas Court of Appeals to the almost 30 grand of which the amount of $15,320.64 was paid to Elmo Lund. This was paid for no services rendered or at least he won't submit statements as to what it is for. Also the amount of $9,559.17 was paid to Robert Creighton for which he apparently did nothing as he won't provide any statements as to why he recieved this amount. This is said and seized fruits illegally obtained from the Petitioners. JOHN A. WAHRMAN also issued himself many numerous amounted checks form the Trust's account. He should also be made to show what this money was used for, making it clear to others that it was not used for his own personal gain.

Hopefully all questions can be answered.

Respectfully Submitted,

Raymond Wahrman

Raymond Wahrman

Mary Wahrman Trust

Ray Wahrman Co Trs.

CONCLUSION

The evidence in this case shows that Mary Wahrman conveyed the subject land from herself to the Mary Wahrman trust during her lifetime.

This trust was a revocable trust, over which Mary retained full power to manage and handle her property the same as before it went into trust, and was designed only to accompolish the distribution of Mary's real and personal property without probate after her death.

The trust was still in effect when Mary died, and the subject land was still owned by the trust, and was within the authority of Joe Wahrman and Raymond Wahrman, the successor trustees to Mary. The co-trustees then conveyed the land to Raymond Wahrman as part of a distribution of all the trust property to the sons of Mary Wahrman after her death, as directed by the Declaration of Trust. There is no reason or ground in Nebraska law

for ruling that Raymond Wahrman is not the sole owner of this land. Furthermore, there is no reason or legal justification for allowing the decision of the Rawlins County District Court of Kansas, regarding title and descent and distribution of Kansas property, to control or affect the title to Nebraska real estate. The Kansas Courts interpreted the effect of the Declaration of Trust on Kansas property in accordance with Kansas law, which requires a trust to be registered during the trustor's life time in order to have effect after his or her death, but Mary Wahrman did everything necessary in Nebraska to create and fund a trust which would avoid probate in Nebraska by providing and an alternate method of distribution of her property.

Nothing about this trust has been carried out the way Mary Wahrman wished it done, so maybe now, with some help, justice can be done.

APPENDIX A

DENIALS OF THE CASE
(These are copied from the originals)

IN THE DISTRICT COURT OF RAWLINS COUNTY, KANSAS

Case No. 088-C-04 May 10, 1991

JOURNAL ENTRY

Now, on this 7 day of May, 1991, the above entitled matter comes on for hearing. The defendant Raymond Wahrman appears. Robert Creighton appears. Hon. Keith R. Willoughby, District Judge hears matter.

The Court, after hearing statements of defendant Raymond Wahrman, finds the motion of objection for Confirmation of sale and request for receipts of expense, and itemized statements for allowance for attorney's fees is denied.

IT IS THEREFORE CONSIDERED, ORDERED ADJUDGED AND DECREED that the findings herein made shall and do hereby constitute the order and decree of this court.

IT IS SO ORDERED.

Signed by Keith R. Willoughby

DENIAL NUMBER 2

IN THE SUPREME COURT OF THE STATE OF KANSAS

District Case No 88C4 Date 1-30-92

You are hereby notified of the following action taken in the above entitled case:

Petition for review by Mary Wahrman Trust.

Denied.

Signed by Carol G. Green, Clerk

DENIAL NUMBER 3

2-7-92

In Memo letter from the Appellate Courts of Kansas, Office of the Clerk. Your appeal cannot be docketed because "The Kansas Supreme Court denied review on this case January 30, 1992. Further appeal of that decision would be taken to the United States Supreme Court"